(2)

Supreme Court, U.S.
FILED

NO. 081440 MAY 14 2009

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

BRENT R. COLE, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

SUPPLEMENTAL APPENDIX H
for
PETITION FOR WRIT OF CERTIORARI

DAVID S. HAEG
Pro Se

P.O. Box 123
Soldotna, AK 99669
Telephone: (907) 262-9249
Fax: (907) 262-8867

APPENDIX H

November 11, 2004: Phone call between Brent Cole & David Haeg.

HAEG: Anyway I don't know have you seen all the crap hitting the newspapers etc. etc. I assume?
COLE: Well yeah.
HAEG: Um and is that you know at the time we gave our – our statements and stuff is that – uh - proper for them to do to release all that stuff? I mean is that how it goes or what?
COLE: Yep.
HAEG: And do I just sit back and uh not do anything about that or what?
COLE: Well um I don't know what we're goanna do, ok.
HAEG: I thought we were kind of trying to avoid this when we gave our statements and everything. I thought you know it was with the understanding that they would be somewhat lenient blah - blah – blah, they'd - we'd settle this quickly and not let it turn into a big media frenzy, circus, whatever you know and now it's whatever eight or nine months after the fact and that's - you know - this is what is happening. Is this – uh - what you expected?
COLE: Mm hmm. I mean I thought it was goanna be much worse, quite frankly.
HAEG: Where I get lost is **why did we tell the State everything then if they're just goanna use it against us? Why did we do that?**
COLE: **We wanted to mitigate the damages.** The idea was you did not – we did not have much of a defensible case.
HAEG: What I guess what I was getting at is – um - why uh and I you know I've been stewing about all this stuff because we in good faith flew Tony up here, took my kids

out of school, had my - you know - my wife and I come up there get hotels all this stuff and it really gripes me that we didn't get to pursue what we had to pursue and is it **I know you said that the only person we could bitch to is Leaders or Leaders boss.** I mean I bit my tongue when the judge – when we were talking – I mean I was scared to death of course I wasn't thinking real straight but could it – is it – **it doesn't do any good to bitch to the judge say, "hey we did all this on good faith with the State and then they just pulled the rug out from under us after we you know essentially spent another $2000 dollars or $3000 dollars just to have people come from Illinois and everything else and they just roop right out from under us".**

COLE: They didn't - I don't understand why you say that. We had 4 options on Monday night and we went through every one of the options.

HAEG: Well we couldn't have – we didn't have ...

COLE: Two of them would have allowed you to go out and be sentenced on Tuesday.

HAEG: **Not with the agreement that we'd had.**

COLE: What makes you think that it - things would be any better?

HAEG: Well at one point you told me that yep the judge would probably agree to have a – a –very strong case for a very minimal sentence and you told me straight to my face that yep you had a very good chance at keeping your plane, and yep she would probably look at you voluntarily giving up all your stuff, and yep she would look at it like you weren't guiding or hunting, and yep you were out there all that and that's what I wanted and that was taken away from me. I mean you don't remember telling me that uh – ok let me just think and put my words very – as clear as I can say - as I can – that this was all about the airplane and that ...

COLE: I said that - I remember saying that.

HAEG: And that there was a very good chance I would get to keep my ...
COLE: I said they must have thought there was a chance. **Cause they changed the rules.**
HAEG: Didn't before we came up there didn't I say that I would like to go open sentencing?
COLE: And I told you - you should think about.
HAEG: And that's when you contacted Leaders and said you told him ...
COLE: You wanted to go open sentencing.
HAEG : Yep and that's when everything got changed?
COLE: And I – and I - and I was shaking my head at that time.
HAEG : Well I'm not – I'm not blaming you for telling me what you think. That's what I'm paying you for. I – you – I think you're taking it that I'm attacking you I'm not. I want to somehow bring forth that in good faith I decided what I wanted to do with my family with your advice. Ok I take you advice sometimes - sometimes I don't and that's – that's my privilege.
COLE: That's right.
HAEG : That's my privilege.
COLE: That's exactly right.
HAEG: And **in my perspective we had an agreement like for 2 weeks and I made all the arrangements to in good faith go to McGrath. You follow me so far?**
COLE: Yeah.
HAEG: **And after we had invested a lot of time, effort, and money, committed to that venture to settle it because my life is getting eaten up by worry among other things and I had great expectations to leave McGrath either without a license for 5 years, and no airplane, and going to jail for 6 months and a $200,000 fine or something a little less. Um – no – nothing to do with you. I knew the judge was the one goanna be deciding that but all that was taken**

away from me at the last minute that agreement. Do you agree with that? Or I mean not at the last minute but whatever it was – well beyond when we could have changed anything and saved all the money in hotel and airfares and etc., etc., etc.

COLE: The thing that was taken away was the option to go open sentencing total. There were other options that were available that would've allow us to go out to McGrath. But to go totally open sentencing ...

HAEG: Well to me they weren't viable options.

COLE: The only thing that was different was the loss of the plane.

HAEG: Yep and is that – is that ethical for them to do say, "yep you give us the plane and you can -- you can have your day in front of the judge". Is that how the game is played all the time?

COLE: Yep.

HAEG: Um legal way to do it?

COLE: They have discretion, yep.

HAEG: Ok um let me just go through my little deals here. Um - like I said when Magistrate Murphy was on the phone would it have been appropriate or could I have – **could I have said, "hey judge before you leave could I put in my 2 cents worth that I came with the understanding this was the deal and then they pulled that rug out from underneath my feet". Could I have done that at that time?**

COLE: Um - she would have – if it would be – she would have cautioned you and told you before you say anything you're represented by an attorney anything you say can, will be used against you, you should speak with your attorneys advice. **If you continued to insist she probably would have listened and that would have been the end of it.**

HAEG: Ok and if and when we go to sentencing and anymore I don't know. I guess it's still up in the air. We still plead not guilty we could still go to jury trial.
COLE: That's right.
HAEG: And ...
COLE: January 7th
HAEG: Uh well that wouldn't be the trial then. I mean it'd get plead and then they'd whatever – it's just goanna get drug out. And you know – it – you know it also seems to me like the State enjoys the fact that I voluntarily gave up guiding because now the longer they drag it out it's just like I'm voluntarily shooting myself in the foot. And that also ...
COLE: Well then why would they have agreed to allow it to go back to July 1st?
HAEG: Um – if – if **I wanted to – uh – to complain – or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?**
COLE: **I left a message. I haven't been in touch.**
HAEG: And ...
COLE: I mean how much – how much do you want me to push it? Is that what you want? Is that really what you want me to do David?
HAEG: Well.
COLE: I mean I – **you know I've got to deal with these people** but if you tell me, "that's the deal I want and I'm not stopping until I get it", I'm goanna send you a letter saying this is absolutely in my mind crazy but I will do it if you tell me.
HAEG: Well I'm not happy that they took away my opportunity that I thought we had set away from me.
COLE: Ok tell me right now is that what you want me to do? Do you want to go back and take the risk when now you've got things in place?
HAEG: You mean go back to the original agreement where it's one year ...

COLE: Yes – a minimum 1 year.
HAEG: Minimum 1 year..
COLE: Yes
HAEG: ... the judge to decide. **That is what I wanted at the time and that is still what I want.** Because I feel that they mal...
COLE: **Ok.**
HAEG: I personally feel that they maliciously took that away from me.
COLE: **Ok.**
HAEG: And yet you know you say that you ask them and they don't respond and to me it seems like it's like the carr - the whatever -- the bait and switch – they go "yeah you can do that" but then it never happens and "yeah you can go open sentencing with this" but it doesn't happen. You know – and I keep - it seems like we keep trying to you know uh make the deal attractive to them so that we can get what we want and they can get enough so that they're happy but it doesn't seem to really be working that way and maybe that's just my imagination. But um that's the way I feel and maybe it's wrong.
COLE: Mm hmm.
HAEG: Um **I would like to keep my plane.** You know and I know it bugs you and ...
COLE: It doesn't bug me.
HAEG: And so um – uh – you know and – **you know I understand you need to have a relationship with the - with these people but I also know that I'm paying you to protect my interest.** I know you have a – a – you know – it kind of goes both ways but I guess you know I feel you should be in my corner all the way.
COLE: I am in your corner all the way.
HAEG: You know so – uh -
COLE: That's why I keep trying to push you to see these things.
HAEG: Ok uh ...

COLE: I will tell you that I litigate against these guys on every front. And um – if you don't have confidence that I'm looking out for your best interest that I'm looking out for my own interest that's not a good deal. That's not what lawyers are supposed to do.
HAEG: Well I agree.
COLE: I will be the first to tell you that.
HAEG: Yep.
COLE: And if you lose confidence in me in that respect you do need to get another attorney.
HAEG: Well – um – alls it was is **you had said once to me that hey we can't totally go bonkers because I have to live with these guys you know after you're gone** and blown away, and out guiding again hopefully, or retired in Mexico I'm still here dealing with these guys on a daily basis and ...
COLE: **Well I deal on my word – you're right.**
HAEG: And you know and I appreciate that – because if you have a good relationship with them you can get probably more stuff done than if you don't have a good relationship but **what I feel when they pulled the rug out from under us when we all showed up in your office and you said, "uh Dave I got something to tell you" I feel they poked you in the eye.**
COLE: **They did and I'm still burning about it.**
HAEG: And another thing kind of gripes me is the amended charges.
COLE: Yeah.
HAEG: They have like a – a copy of the amended ones. The worse ones were in the body of the thing are still all the old charges. Did you notice that?
COLE: Mm hmm.
HAEG: So you know what they would have filed still had the old charges in it. It just had a cover letter stating different ones and is that – I mean it just seems to me like it's unprofessional.

COLE: The amended information changed the first five counts.
HAEG: No they still say uh – 08 inside the body when it says ...
COLE: Well that's because he probably did a poor job doing it.
HAEG: That's what I'm saying it's very unprofessional. You know I just look through it and I'm like "huh they forgot to change all of them in the body of the document". Um I just – in other words he knew – I mean he was planning on that all along and then "voop" last minute – you know.
COLE: I don't think he was planning on it - but anyway.
HAEG: Well we were. I was.
COLE: **Right.**
HAEG: I don't know if anybody else was but I sure was. Otherwise I wouldn't have taken my kids out of school and flown Tony up here.
COLE: **Mm hmm**.
HAEG: Um if we go to a jury trial is it in McGrath?
COLE: Yep
HAEG: Um I'd like you to just kind of – I know it cost – you'd have to look at it how much money blah – blah – blah it would take for us to do that, the advantages because alls I'd be doing was going right back to the agreement that was pulled out from underneath my feet – I understand that. We'd be going in there essentially saying, "yeah we're guilty but we're only guilty of same day airborne - furbearers and not big game".
COLE: Mm.
HAEG: You know I think that's a done deal **because we already have given them everything we need to persecute us** and now if we go that way it's pretty – anyway I would like to you think about just a really abbreviated trial.
COLE: **Ok.**

November 22, 2004: Meeting between Brent Cole, David Haeg & Tom Stepnosky.

HAEG: **One of the Board of Game Members – current Board of Game Members told me in Fairbanks literally about a week before went out there he said, "Dave if you end up shooting animals outside of the area just make sure you mark them on your GPS inside the area".**
COLE: – He's not – he's not...
HAEG: – He's not part of the State?
COLE: – I don't know if he or not.
HAEG: – **He's appointed by the governor** and but I don't know.
COLE: – You know I don't know what to tell you on that one because **I don't think that a State official can tell you to violate the law quite frankly. I really don't. I don't know that it's a defense.**
HAEG: – Well it's partially to do with that thing I have wrote – that as I wrote it I became to believe – maybe mistakenly – but um other people have read it, Toms read it, and I believe I have a pretty -uh – I feel I have a reasonable explanation why I shouldn't be punished as much as somebody who did essentially the same thing but did it with a client in the field that's paying them money. Because I was out there spending my own money to help with a problem that is widely known as a problem and has now been opened up across most of the areas where I did it to what I've done is legal. So I feel that I have a better chance of getting a lenient sentence then someone that went out and landed and had their client jump out and shoot a moose for $16,000. Because I was spending my own money, burning my own fuel, risking my own airplane to help the State with a program – where I was is now where that program is expanded to. And in the State Constitution

it says that if there are things like that where you do things and later on a law is passed that allows it that that will be looked at when it comes time to sentence and time to decide the punishment that's handed down.

COLE: – Ok. You want to take that risk? You have your license back in 8 months.

HAEG: – **I already gave up a whole years worth of income.**

COLE: – I know that David.

HAEG: – **Doesn't that account for anything?**

COLE: – Yeah it does – that's – **that's what we negotiated.** .

HAEG: – I understand.

COLE: It doesn't make any difference, to them. I'm just saying that's the way they see things, that's the message they send to Leaders.

HAEG: Yep but you know it I also remember why didn't – why didn't Leaders let us go out to McGrath when it was eleven counts and let the judge decide that?

COLE: **I don't know why he didn't do that. That pisses me off.** He just –he has caused me to have to sit here and explain this to you 25 times he did it because he wanted to be a dick and it pisses me off. It caused me so much problems in my dealing with you and I as much told him.

HAEG: Yep.

COLE: It pisses me off. **He had no concept of what it has done to your and my relationship.**

HAEG: Well I think it all boiled - it all boiled down to like you admitted before and I admitted that it all boils down to the airplane. Because he didn't want to go out there and have the airplane up for grab – up for the judge to decide who keeps the plane. That's why that whole thing went down the tubes.

COLE: He's so stupid. **Your right he did say that and what can I say - I cannot - I have no control over what parameters he set.**
HAEG: Like I told you to me it's important to get the plane back somehow. You don't – I guess what you're saying we're not goanna do that short of a trial probably?
COLE: **It doesn't sound like it to me.**
HAEG: So he just put his foot down even though that isn't his job to administer punishment. It is his job to determine guilt or innocence as far as I'm concerned.
COLE: They can do all that – they do it all the time – I mean you can say that but...
HAEG: Well that's what I read through the Constitution.
COLE: They do it day in and day out – they set penalties.
HAEG: How did we get to where we're at now? From where we were at before – where you – how did we get from there to here?
COLE: Well I just keep talking to him, we keep working it, we keep throwing out suggestions, the pressure comes down, **there's a day that we're suppose to go out there,** they've got to put on evidence, they concede a little bit, we concede a little bit, we are where we're at.
HAEG: Ok. Anyway there's a couple more things – have you made any headway on whether I should be booking hunts or not or whether Arthur should be booking hunts or going to the sport shows?
COLE: Hey Scot it's Brent I have uh David Haeg and Tom in here and they're asked again about whether the Troopers are willing to talk about the plane. Can you call me back and if you talk to them if you could give me the name of the trooper whose making this decision and maybe I can talk to him personally seeing that this is such a difficult thing for them to make a decision on. Call me 277-8001. Bye.
HAEG: Um have you run it by Leaders that I'm thinking about going to a jury trial?
COLE: Yep.

HAEG: What does he say about that – great?
COLE: I don't have good client control. He can't believe that I would do that. And I just say, "well..."
HAEG: Ok.
COLE: **"...he wanted to go open sentencing - yeah I know I don't understand it but".**
STEPNOSKY: You should have a sit down talk with Scot Leaders and say, "hey Scot come on now – I mean just like he said – gave up the hunting season, had him stewing over this god damn moose thing, now then spilled his guts from – at the deposition like he was asked to, all of that and you know what are you doing – ok – you've got him nailed to the cross already well lets put some more spikes in him – I mean – come on Scot" and say "hey (inaudible). You know it's been going on for 8 goddamn months already – I mean goddamn – life is to freaking short to be going through this shit. Resolve it and get the man on with his freaking life.
COLE: And – and you know – maybe I shouldn't be so concerned out of your welfare. It certainly isn't in my best interest. My best interest is for you to litigate the shit out of this thing and just keep paying me a whole ton of money.
STEPNOSKY: I thought he did that already.
COLE: No I haven't even started that - down that trail. I don't want to start down that trial. You mean – I – you know – I – I - unlike what people say about attorneys I want to see you get taken care of. I mean I – under these circumstances you're never goanna feel good about this thing, regardless.
STEPNOSKY: **And with nothing in writing that I can see at this point I mean freaking Leaders can go in there before January 7th and amend that thing anyway he wants.**
HAEG: Um what should I do about these people that keep calling me wanting to send me money?
COLE: You'll make them send you money on July 1st.

HAEG: Ok well if you could just at some point try to figure out yes or no. Also we – **I have yet to get a full copy of my interview with the State that we did in your room.**

COLE: I understand that to – I have asked them to send a tape into the Troopers – the tape is out in McGrath – I've asked them to send it in to here so that I can have it redone.

STEPNOSKY: I mean there aint very much damn time between now and January 7th

HAEG: And what happens at January 7th? What does that mean?

COLE: Well my idea is that this is goanna happen before then.

HAEG: Well that's what we've said 8 months ago. What happens at January 7th?

COLE: Well it's a trial call and they say well what's goanna happen? If its goanna go to trial and if it's goanna go to trial then you've gotta be there.